

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 18-292
)	
ROBERT BOWERS)	

**MOTION FOR LEAVE TO FILE MOTION TO APPOINT
ADDITIONAL CJA COUNSEL UNDER SEAL AND *EX PARTE***

The defendant, Robert Bowers, through undersigned counsel, request leave to file a motion to appoint additional Criminal Justice Act (CJA) counsel under seal and *ex parte*.

1. The administration of the CJA is a judicial function from which the prosecution is typically excluded. *See* CJA Guide, Vol. 7, Ch. 2, § 210.40.20(e) (“Employees of law enforcement agencies or U.S. attorney offices should not participate in the completion of the Form CJA 23 (Financial Affidavit) or seek to obtain information from a person requesting the appointment of counsel concerning the person's eligibility.”); *id.* at § 230.26.20(c) (“Case budgets should be submitted *ex parte* and filed and maintained under seal.”). *See also United States v. Feldman*, 788 F.2d 625, 626 (9th Cir. 1986) (“[T]he [CJA] excludes the government from participation in the [CJA’s] compensation and reimbursement arrangements”); *United States v. Gonzales*, 150 F.3d 1246, 1257 (10th Cir. 1998) (noting that the CJA process is non-adversarial and has “traditionally been closed to the prosecution”).

2. “The Government’s exclusion from the administration of the CJA is a significant contributing factor to the fairness of our system and the CJA’s role in redressing the imbalance of power between an indigent defendant and the Government.” *United States v. Wells*, 879 F.3d 900, 913 (9th Cir. 2018); *see id.* (admonishing the government for placing itself in an “ethically compromised position” by objecting to the continuation of the appointment of CJA counsel); *United States v. Parker*, 469 F.3d 57, 60 (2d Cir. 2006) (noting that the government took no position on the appointment of CJA counsel, recognizing that “the decision of assigning counsel to represent indigent defendants is one that rests with the Court”).

3. Because the appointment of additional CJA counsel is not a matter in which the government has a role, and because the motion includes protected attorney work product information, Mr. Bowers asks that the Court grant him leave to file the motion under seal and *ex parte*.

Respectfully submitted,

/s/ Judy Clarke

Judy Clarke

Clarke Johnston Thorp & Rice, PC

/s/ Michael J. Novara

Michael J. Novara

First Assistant Federal Public Defender

/s/ Elisa A. Long

Elisa A. Long

Supervisory Assistant Federal Public Defender